

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

**Case No. : C.R.No.1203 of 2000**

**Date of Decision : November 29, 2006.**

Des Raj Verma ..... Petitioner

Vs.

Anil Kumar ..... Respondent

**Coram : Hon'ble Mr.Justice P.S.Patwalia**

\* \* \*

Present : Mr.I.K.Mehta, Senior Advocate  
with Mr.M.S.Kohli, Advocate,  
Mr.Saleem Malik, Advocate  
and Ms.Ranjit Mehta, Advocate  
for the petitioner.

Mr.O.P.Goel, Senior Advocate  
with Ms.Mamta B.Jain, Advocate  
for the respondent.

\* \* \*

**P.S.Patwalia, J. (Oral) :**

The present revision petition has been filed by the tenant challenging the order passed by the Appellate Authority who accepted an appeal filed by the landlord against the order of the Rent Controller and directed the eviction of the petitioner-tenant from the demised premises which is a shop bearing No.1676 situated in Mani Majra, Union Territory (U.T.), Chandigarh.

The respondent-landlord had filed a petition seeking eviction of the petitioner from the shop in dispute. It was his case that the shop was earlier owned by one Smt. Hukam Kaur and the petitioner-tenant was a tenant under her at a monthly rent of Rs.500/-. The shop comprised of a

room for residence on the first floor and a shop on the ground floor. The petitioner was a tenant in respect of a portion on ground floor only. The respondent-landlord purchased the shop vide sale deed dated 25.5.1995 and hence became owner of the said shop with effect from the said date. The present petition seeking eviction of the tenant was filed in January 1996. Eviction had been sought on the ground that the petitioner-tenant had not tendered the rent of the premises with effect from 1.6.1995 and as such he was liable to be ejected for non-payment of rent. Additionally the respondent-landlord had contended that he was carrying on his business of sale of clothes as a street hawker since 1984. He did not have for his use and occupation any shop or any other non residential building in the urban area of Mani Majra/Chandigarh. As such he required the shop for his own use and business. Eviction was therefore sought on the ground of bona fide personal necessity.

The petition was contested by the petitioner-tenant. It was contended that the respondent-landlord had not approached the Court with clean hands. He had concealed a number of facts. The petitioner-tenant stated that in fact the respondent-landlord had another adjoining shop being No.1675 where he along with his father were already running business of selling cloth. The said shop was originally taken by the father of the landlord but the landlord had taken charge of the said shop and was doing business there for the last ten years. It was further stated that in Mani Majra itself they had another premises bearing No.1850. This premises had two shops on the ground floor and residential accommodation on the first floor. The entire family of the petitioner including his parents were living in this residential premises. It was further stated that out of two shops located in the said premises, one was let out to one Som Nath and the other was let out to one Puran Chand in the year 1995. Apart from this, it was further stated that the petitioner was owner of two other shops at Bhainsa Tibba, Panchkula along with his brother. It was therefore contended that all these

facts had been deliberately concealed by the petitioner. In fact the petitioner only wanted to evict the tenant from the said premises and the ground of bona fide personal necessity was merely a pretext of to seek eviction of the tenant.

The learned Rent Controller after examining the aforesaid facts came to the conclusion that the petitioner did not approach the court with clean hands. The learned Rent Controller was of the opinion that the urban area of Chandigarh, Mani Majra, Mohali and Panchkula form one unified area even though Mohali is a town in Punjab and Panchkula is a town in Haryana and Mani Majra/Chandigarh is Union Territory. On the aforesaid findings it was held that the ground of bona fide personal necessity was not made out. In so far as the other ground of non payment of rent is concerned the same was not seriously disputed before the Rent Controller as the entire arrears of rent had been deposited after the filing of the petition.

The landlord preferred an appeal. Appellate Authority again re-examined the evidence on record. On an examination of the evidence the Appellate Authority came to the conclusion that Shop No.1675 was owned by the respondent-landlord's father and Shop No.1850 was owned by respondent-landlord's mother. Hence these two shops were not available to the landlord. Property at Bhainsa Tibba was situated in a different town of Panchkula and hence in the opinion of the Appellate Authority the landlord was entitled to decide as to where he wanted to run his business and was entitled to run his business at Mani Majra. Thus the demised premises being No.1676 was the only premises available to the landlord to run his business in Mani Majra. It was on these findings that eviction of the petitioner-tenant was ordered. It is against the aforesaid findings recorded by the Appellate Authority that the present revision petition has been filed.

I have heard Shri I.K.Mehta, learned senior counsel appearing for the petitioner-tenant and Shri O.P.Goel, learned senior counsel appearing for the respondent-landlord and also perused the paper book. It is

primarily the contention of Mr. Mehta that actually all the shops mentioned herein above are jointly owned by the family of the petitioner and it is all one joint family. Mr. Mehta has drawn my attention to lease deed Ex.P-1 entered into in September 1995 where it has been mentioned that the shop being let out bearing No.1850 is HUF property. He has further referred to a portion of the cross-examination of Shri Ram Nath where it has been stated that the respondent-landlord had taken a sum of Rs.30,000/- from the account of M/s Ram Nath Suresh Kumar for the purpose of purchasing Shop No.1676. He further submits that from a reading of the evidence, it is apparent that the respondent-landlord and his parents are residing together in the same premises. On the basis of these three facts Mr.Mehta submits that in fact all the shops are part of HUF property. Therefore he submits that the respondent-landlord has sufficient alternative accommodation available in Shops No.1675 and 1850 even if the property at Bhainsa Tibba is to be excluded. He therefore submits that in the present case the ground of bona fide personal necessity is not made out. To further supplement this fact he submits that the shop was purchased in May 1995 and within eight months the present petition for eviction had been filed. He therefore states that the only intention of the respondent-landlord is to somehow or the other seek eviction of the petitioner-tenant.

On the other hand Mr.Goel, learned senior counsel for the respondent-landlord contends that a reading of cross-examination of Shri Ram Nath, father of the landlord would show that he has categorically stated that the fact that the property was HUF property was mentioned in the lease deed due to typographical mistake. He has stated that he could only read and write Urdu and did not know any other language. The lease deed is scribed in English. He therefore submits that there is bona fide mistake in describing the property as a HUF property. Mr.Goel thereafter refers to statement of Shri Ram Nath wherein he categorically stated that he is the sole proprietor of M/s Ram Nath Suresh Kumar and owner of Shop No.1675

in his individual capacity. Similarly Shop No.1850 is owned by his wife in her individual capacity. Mr.Goel submits that there is no other evidence on the record to show that the respondent-landlord or his parents have any HUF property, which he submits is always a separate legal entity. Thus Mr.Goel states that Shop No.1676 is the only premises available to the respondent-landlord for his own use and occupation. Mr.Goel further submits that even if the respondent-landlord had borrowed some money from his father or his firm to purchase the shop it would not detract from the fact that this was the only shop which belonged to the respondent-landlord. In so far as the shops of Bhainsa Tibba are concerned he submits that they fall in a separate urban area of Panchkula situated in Haryana. He submits that the respondent wanted to run his business in the market at Mani Majra as a cloth merchant and as a landlord he is entitled to choose where he wishes to set up his business and his choice should normally be respected by the courts.

After hearing learned counsel for the parties I do not find any merit in the contentions raised by the learned counsel for the petitioner. I am of the opinion that on the basis of three circumstances being merely mention of the word HUF in lease deed, borrowing of Rs.30,000/- by the landlord to purchase the shop and parties co-habiting, I cannot return a finding that there exists a coparcenary between the landlord and his parents and still further it was that Hindu Undivided Family which was owner of all the shops situated at Mani Majra. From evidence it is clear that Shop No.1675 is owned by landlord's father and Shop No.1850 is owned by his mother. Thus I find no error in the view taken by the Appellate Authority that Shop No.1676 is the only premises which belongs to the landlord and which was available to him for his own use and occupation. In so far as the two shops at Bhainsa Tibba are concerned I am of the opinion that the same are located in different urban area being Panchkula in Haryana. The landlord is entitled to choose and claim that he desires to run his business in

the shop situated at Mani Majra and the courts would respect the choice of the landlord.

For the reasons aforesaid I do not find any error in the view taken by the Appellate Authority ordering eviction of the petitioner-tenant from the shop in question.

At this stage I may refer to two judgments cited by Mr.Mehta in support of his contentions. Mr.Mehta has firstly relied upon the judgment in ***Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, AIR 1999 Supreme Court 2507***. He has relied upon paragraph 13 of the said judgment which reads as hereunder :-

*“13. Chambers 20<sup>th</sup> Century Dictionary defines bona fide to mean 'in good faith : genuine'. The word 'genuine' means 'natural : not spurious : real : pure : sincere'. In Law Dictionary, Mozley and Whitley define bona fide to mean 'good faith, without fraud or deceit'. Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bona fide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked*

*at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself – whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the Court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the Court is satisfied of the bona fides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the Court would not in such a case thrust its own wisdom upon the*

*choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”*

A reading of this paragraph would show that the view taken by the Hon'ble Supreme Court was that in assessing the bona fide need of the landlord, the court should place itself in the position of the landlord and then answer the question whether in the given facts substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere and honest. In the present case on an assessment of the facts I am of the opinion that the need of the landlord is bona fide. It is apparent that the landlord is not having any independent premises to run his business. His father is carrying on his own business. Therefore if the son (landlord) desires to set up his own shop, no fault can be found with the same. I therefore find that the need of the landlord is bona fide in this case.

The other judgment referred to by Mr.Mehta is in the case of ***T.Sivasubramaniam and others vs. Kasinath Pujari and others, (1999) 7 Supreme Court Cases 275***. Mr.Mehta contends that it has been held in the said judgment that if any member of the family is occupying a residential building in the same city, town or village, an order of eviction cannot be passed. The said judgment was rendered in an interpretation of Clause 10(3)(a)(i) of T.N.Buildings (Lease and Rent Control) Act, 1960 which reads as hereunder :-

*“10. (3) (a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the*

*landlord in possession of the building -*

*(i) in case it is a residential building if the landlord requires it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a residential building of his own in the city, town or village concerned;”*

A similar provision of law does not exist in so far as the Punjab Urban Rent Restriction Act is applicable to the Union Territory of Chandigarh. Therefore I am of the opinion that the said judgment would not be attracted to the facts of this case.

Mr.Mehta then submits on the strength of certain photographs attached by him along with his application placing on record certain subsequent events i.e. photographs showing that the respondent-landlord is sitting in the Shop No.1675. He therefore submits that it is clear that he is carrying on his business from the said shop. However these averments are denied by the learned counsel for the respondent-landlord. It is submitted that occasionally the respondent-landlord may have sat there but it does not mean that he is carrying on his business from the said shop. It has been stated that when his father was ill or out of station he use to sit there. I am of the opinion that these photographs also do not make out the case of the petitioner-tenant any further.

For the reasons aforementioned I do not find any merit in this revision petition and the same is accordingly dismissed.

Mr. Mehta submits that some reasonable time may be afforded to the petitioner to vacate the premises. Mr. Goel states that the petitioner-tenant has not tendered the rent for the last 6-7 months. Therefore if some time has to be granted he must be made to tender the outstanding rent and also the future rent. I am of the opinion that the petitioner should be given three months' time to vacate the premises. This should be however subject

to the condition that he would pay the entire outstanding arrears of rent within a period of three weeks from today and deposit the rent of next three months by the 10<sup>th</sup> of every month. Accordingly the petitioner is granted time up to 28.02.2007 to vacate the premises. He would also file a written undertaking within four weeks before this Court to the effect that he would hand over the vacant possession of the premises to the respondent-landlord on or before 28.02.2007. The rent as aforesaid would be tendered by way of Bank Draft in the name of respondent-landlord.

November 29, 2006

*monika*

( P.S.Patwalia )

Judge